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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 291

C. S. HELMIG, Petitioner,

v.

ROCKWELL MANUFACTURING COMPANY, a corporation, and BETHLEHEM STEEL COMPANY, a Corporation, Respondents.

BRIEF OF BETHLEHEM STEEL COMPANY IN OPPOSITION

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QUESTIONS PRESENTED

1. Was the federal question presented in a timely fashion?
2. Is there any federal question when the entire litigation involved only state law?

STATEMENT

This litigation involves two attempts by C. S. Helmig, a Pennsylvania resident, to collect a broker's commission. In April 1948 he undertook to obtain for Rockwell Manufacturing Company, one of the respondents, steel ingots for conversion into steel sheets, and the services of a rolling mill to effect the conversion. (R. 7a)*. On April 7, 1948 Rockwell promised to pay

* Record references are to the Record in the Supreme Court of Pennsylvania at No. 7 March Term, 1957, the only part of the litigation in which Bethlehem is a party.

him a commission of $35.00 per ton of steel sheets delivered to it F.O.B. Eastern seaboard. (R. 6a) He tried to arrange for the necessary rolling time in the Sparrows Point, Maryland plant of Bethlehem Steel Company, the other respondent, but Bethlehem refused to enter into any conversion deal in which a broker was involved. (R. 14a) Rockwell thereupon cancelled its agreement with him on April 15, 1948, eight days after it was made. (R. 7a). For this cancellation Helmig sued Rockwell in assumpsit and lost, the Supreme Court of Pennsylvania affirming the decision of the Common Pleas Court of Allegheny County that as a matter of law the cancellation of the contract was not wrongful. This is the case reported at 380 Pa. 305, 111 A.2d 118 (1955), the opinion of the court being printed at pp. 14-20 of the Appendix to the Petition.

Subsequent to the decision of the Supreme Court of Pennsylvania in this first case, and more than seven years after the contract cancellation in 1948, Helmig made another attempt to recover the commission by a new action, naming Rockwell and Bethlehem both as defendants, and alleging a conspiracy between them as the cause of the contract cancellation by Rockwell. (R. 7a) Shortly thereafter he also moved for a new trial in the first action. Sworn answers denying liability were filed in the conspiracy action, followed by motions by the defendants for judgment on the pleadings on the grounds of *res judicata*, statute of limitations and failure to state a cause of action. (R. 2a) At the same time Rockwell moved to dismiss the motion for new trial. Proceedings in the two cases were heard together for convenience by the court of first instance, which refused to order a new trial in the first action because the motion

was neither timely nor well-founded, and in the second (conspiracy) action entered judgment on the pleadings for the defendants. Appeals were filed to the Supreme Court of Pennsylvania at successive numbers (=6 and =7, March Term, 1957), and the arguments heard together, followed by an affirmance, reported in 389 Pa. 21 (1957).

A petition for rehearing was filed, and refused without opinion, per curiam. It was in this petition that for the first time an allegation was made that the decision of the court was a violation of the plaintiff's rights under the 14th Amendment.

ARGUMENT

I. The Federal Question Was Raised Too Late.

The federal question here urged was not raised until petitioner's petition for rehearing in the Supreme Court of Pennsylvania. That petition was refused without opinion, and without record decision of the federal question raised. The opinion of the court below (App. 1-14) shows that it decided no federal question. The federal question has not been raised in a timely fashion. *Radio Station WOW, Inc. v. Johnson*, 326 U. S. 120, 128, 65 St. Ct. 1475 89 L.Ed. 2092.

II. There Is No Federal Question to Be Decided.

Stripped of all verbiage, the petitioner's complaint is that the Pennsylvania Supreme Court decided against him, and he thinks the decision was wrong. His claim was based on no federal grounds, the defense involved no federal ground, and the decision adverse to him was based solely on non-federal grounds. Petitioner's naked contention is that denial of his claim is *per se* a deprivation of property without due process, though he has been afforded every opportunity in the state courts and has failed *on the merits* to persuade any court of his right to recover. The sequence of events in the litigation may not be to petitioner's liking, but his situation is no different from any other disappointed litigant, and his defeat was in no way occasioned by an erroneous decision of a federal question.

III. The Court Below Was Clearly Right.

The well-considered opinion of the court below speaks volumes on this score. The question of granting

a new trial in the first action was certainly peculiarly for the hearing court's decision, which was adverse to petitioner, and there was no occasion to disturb it. The conspiracy action was an obvious, and deservedly unsuccessful, attempt to avoid the bar of the first adjudication, and it was untimely under state law.

CONCLUSION

As the record shows, this petitioner has been pressing his case for eight years, in the face of adverse decisions by every court in which he sought relief. He has had a more than adequate day in court on a claim which does not even remotely involve any principle of constitutional law. This Petition for Certiorari should be forthwith dismissed.

Respectfully submitted,

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